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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 71 - 365

LYLE E. STRAHAN,

Petitioner

versus

WILLIAM L. STRAHAN and
MARTHA H. STRAHAN,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

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IN THE

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OCTOBER TERM, 1971

No. _____

LYLE E. STRAHAN,

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Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Petitioner, Lyle E. Strahan, prays that a writ of certiorari issue herein to review the judgment and decree of the United States Court of Appeals for the Fifth Circuit, affirming the granting of a summary judgment by the United States District Court for the

Western District of Louisiana.

OPINIONS BELOW

The District Court for the Western District or Louisiana rendered an opinion which is reprinted as Appendix "A" hereof.

The opinion of the United States Court of Appeals for the Fifth Circuit, affirming the judgment is reprinted as Appendix "B" hereof.

JURISDICTION

Original jurisdiction in this case is predicated upon diversity of citizenship.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Estate of Jensen, 162 N. W. 2d 861 (1968)

Glona v. American Guarantee Liability Insurance Company, 391 U. S. 73 20 L Ed 2d 441 (1968)

Haley v. Metropolitan Life Insurance Company, 431 S. W. 2d 7 (St. Louis Court of Appeals, 1968)

Herbert v. Petroleum Pipe Inspection Inc., 396 Fed. 2d 237 (CCA 5, 1968)

Levy v. Louisiana, 319 U.S. 68 20 L Ed 2d 436 (1968)

LaBine v. Vincent, 28 L Ed 2d 288; ____ S.Ct.____; ____U.S.Rep.____; (March 28, 1971)

Schlesinger v. Wisconsin, 46 S.Ct.Rep. 260; 270 U.S. 230; 70 L. Ed. 557 (1925)

STATEMENT OF THE CASE

Petitioner commenced this diversity action alleging that he is the natural son of the late Dr. Earl O. Strahan (hereinafter called decedent), a resident of Winnsboro, Louisiana, who died on August 13, 1964.

Decedent left no widow or other children and his entire estate has been claimed by his mother, the respondent Martha H. Strahan, and his brother, the respondent William L. Strahan.

Respondents moved for a summary judgment on the grounds that the fact of illegitimate birth barred petitioner from inheriting. This motion was granted by the trial court and a judgment dismissing the complaint was entered on October 9, 1969. This judgment was affirmed by the Fifth Circuit Court of Appeals on June 17, 1971.

REASONS FOR GRANTING THIS PETITION

Petitioner is aware that this Court in LaBine v. Vincent, 28 L. Ed 2d 288; ____ S. Ct. ____; ____ U.S.Rep. ____; (March 28, 1971), rendered a decision adversely to this petitioner's contentions. However, petitioner hopes to persuade the Court that LaBine should be overruled since its result was erroneous, manifestly unjust and contrary to the constitution.

ARGUMENT

The Fifth Circuit Court of Appeals affirmed the judgment of the trial court solely because of the holding of the majority of this

court in the LaBine case. Petitioner earnestly asks this Honorable Court to reconsider this entire legal issue and reverse.

It will be conceded that if petitioner had been born in wedlock, he would have been decedent's sole heir at law and entitled to all intestate property. Respondents contended and the Court held that he is deprived of his inheritance by Louisiana statutory and case law denying these valuable rights solely because his parents were not married.

Petitioner acknowledges that the Louisiana Civil Code and State Court decisions prevent an illegitimate child from inheriting. However, he urges that all such jurisprudence was completely nullified and all codal articles rendered unconstitutional by this Court's decisions in Levy v. Louisiana, 319 U.S. 68 20 L. Ed. 436 (1968) and Glona v. American Guarantee Liability Insurance Co., 391 U.S. 73 20 L. Ed. 2d 441 (1968).

The trial court's opinion endeavors to distinguish Levy and Glona on the basis that they dealt with rights of action under death statutes whereas we are here dealing with a right of inheritance.

It is impossible to see how such a distinction can be logically justified. The language of Levy makes it evident that the decisions have no such limitation and are directly applicable here. The Levy opinion states:

(at 20L Ed 2d 439)

"WHY SHOULD THE ILLEGITIMATE CHILD BE DENIED RIGHTS MERELY BECAUSE OF HIS BIRTH OUT OF WEDLOCK? HE CERTAINLY

IS SUBJECT TO ALL THE RESPONSIBILITIES OF A CITIZEN, INCLUDING THE PAYMENT OF TAXES AND CONSCRIPTION UNDER THE SELECTIVE SERVICE ACT. HOW UNDER OUR CONSTITUTIONAL REGIME CAN HE BE DENIED CORRELATIVE RIGHTS WHICH OTHER CITIZENS ENJOY? (Emphasis supplied)

We urge that our position is fortified by an examination of the basic principles in those cases denying illegitimates a right of action under La. CC Art. 2315. This statute never specifically limited child beneficiaries to legitimate issue. The rule was jurisprudential and appears to have been originally set forth in: Lynch v. Knoop, 118 La. 611 43 So. 252 (1907).

An examination of this decision reveals that the Court reached this result by relying on cases and codal articles dealing with the restricted rights of illegitimates particularly in the field of inheritance. Precedents under Art. 2315 and the codal articles on inheritance spring from a common root i.e. that one of illegitimate origin has rights that are drastically abridged merely because of the circumstances of his birth.

The trial court sought to justify the existing laws on two grounds:

(1) The State has a definite interest in encouraging family unity and this policy is furthered by denying rights of inheritance to illegitimates.

(2) Granting such rights to illegitimates would have a "devastating" effect upon the stability of land titles.

Petitioner urges that neither ground can be justified on the basis of logic, fairness or common sense.

Argument (1) would seem to be that a denial of inheritance rights to children born out of wedlock will discourage illegitimate births. Yet, the penalty is not inflicted upon the transgressing parents but upon the innocent child who obviously has no control whatsoever over the marital status of the man and woman who are responsible for his birth. Since no penalty is imposed on the parents, it would seem that this denial of rights to illegitimates would have no effect whatsoever, neither encouraging nor discouraging illegitimacy. In fact, it is nothing short of fanciful to suppose that these rules of law act as a deterrent to illegitimacy. An unmarried couple in the act of procreating a child probably never expect pregnancy to result from their union. Under the circumstances, their behavior would hardly be influenced by thoughts of how the inheritance rights of any such unexpected and probably unwanted child would be affected.

As to (2), the right of a State to protect and regulate land tenure is not absolute. A State legislature might consider it highly desirable to restrict land ownership to residents considering that "absentee landlords" frequently neglect their holdings. Certain lawmakers could be convinced that only members of a certain race or religion were qualified to own or inherit realty. However, all statutes that attempted to achieve such objectives would be patently unconstitutional.

If the codal provisions violate the equal protection clause of the fourteenth amendment, no amount of state "public policy"

considerations can make them valid. They are void ab initio! As stated by the United States Supreme Court in Schlesinger v. Wisconsin, 46 S.Ct. Rep. 260; 270 U.S. 230; 70 L. Ed 557, 564 (1925).

> "Rights guaranteed by the Federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The state is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever." (Emphasis supplied)

Petitioner urges that Levy and Glona compel a reversal.

Whatever effect, the application of constitutional principles would have, devastating or otherwise, cannot countervail. Unjust and discriminatory laws do not become sanctified by the passage of time and in this instance, those aimed at persons of illegitimate birth should be abolished once and forever.

But we urge further that the spectre of utter chaos in land titles that will ensue is far more apparent than real. An examination of an abstract of title can never exclude the possibility that one or more owners in the title chain left legitimate offspring whose rights were never recognized for one reason or another. Such persons or their lineal descendants could always lay just claim to their portion of the ancestor's estate.

In Louisiana and elsewhere proof of heirship is made by a simple affidavit executed by two persons who knew the decedent. Obviously, by this procedure, legal heirs can,

and probably have been excluded from the chain of title.

In substance, the decisions below hold that the state does and should have the power to completely disinherit persons in plaintiff's class for the sake of safeguarding the property rights of a different class which had the good fortune to be born in wedlock. If this rule of law is not arbitrary, unreasonable and discriminatory, it is difficult to conceive of one that ever would be.

The trial court recognized that the legal trend subsequent to Levy and Glona is contrary to its holding (App. p. 10). The precise issue was recently before the Supreme Court of North Dakota; In Re: Estate of Jensen, 162 N. W. 2d 861 (1968). There, a state statute denying inheritance rights to illegitimates was held invalid. The Court (at p. 878 stated:

> "Applying the reasoning in Levy, as no action, conduct, or demeanor of the illegitimate children in the instant case is relevant to their status of illegitimacy, we conclude that the classification for purposes of inheritance contained in Sec. 56-01-05, which is based on such a status...is unreasonable...(a statute)...which punishes innocent children for their parents' transgressions, has no place in our system of government, which has as one of its basic tenents equal protection for all."

A Missouri appellate court reached the same result in connection with the rights of an illegitimate child to recover for his

father's death under the Federal Employees' Group Life Insurance Act; Haley v. Metropolitan Life Insurance Company, 434 S.W. 2d 7 (St. Louis Court of Appeals, 1968).

It is respectfully submitted that the foregoing would compel a ruling in petitioner's favor and that only the LaBine decision would justify a contrary result.

LaBINE SHOULD BE OVERRULED

This Honorable Court has never been one for the perpetuation of error. None of petitioner's foregoing arguments are refuted or even met by the LaBine majority opinion, nor does LaBine answer the central and all controlling questions, i. e.

(1) Why should a person be discriminated against merely because of a circumstance over which he has no control?

(2) What reasonable basis is there for denying legal rights to an individual simply because he was born out of wedlock? Is there any more valid reason for such a denial than there would be for a denial based upon race?

As stated so aptly by the dissent in LaBine (p. 299, L. Ed)

> "For reasons not articulated, the Court refuses to consider in this case whether there is any reason at all, or any basis whatever, for the difference in treatment that Louisiana accords to publicly

acknowledged illegitimates and to legitimate children".

The majority in LaBine attempts to justify the conclusion by stating inter alia that the laws also discriminate between classes of heirs and between wives and concubines. It would seem apparent that a vast difference exists in the case of the illegitimate. Certainly, it is most reasonable for the law in matters of inheritance to favor a decedent's children over his collateral relatives. As to the wife vs. concubine point, the latter voluntarily assumes that status and always has the right to end it. The illegitimate is in no way responsible for his condition and is powerless to alter it.

LaBine also observes that parents of illegitimates may take certain steps to remove the legal impediments of children born out of wedlock. But this would seem to be a most cogent reason for striking down the codal articles here assailed. An illegitimate child whose parents legitimate him or take other steps needs no protection from the law. The child whose parents are too careless or callous to take protective steps has no redress other than a more enlightened rule of law.

In recent years, this Court has uniformly struck down State laws that seek to discriminate against persons because of race or religion. Shelley v. Krammer, 344 U.S. 1 (May 3, 1968); 68 Sup. Ct. 836; 92 L.Ed 1161, 3 LAR 2d 441. It has assiduously followed the same pattern in protecting the rights of convicted felons, suspected subversives and other groups and individuals from state laws. It would be indeed ironical to deny all such

relief to a class of defenseless and innocent persons by upholding state laws which are as harsh, antiquated and punitive as they are unjust and irrational.

Respectfully submitted,

J. STANLEY WAGNER, Esquire

and

ROBERT G. HEBERT, Esquire
608 American Bank Building
New Orleans, Louisiana 70130

BY: _____
ROBERT G. HEBERT

CERTIFICATE

I certify that a copy of the foregoing Brief has been served upon opposing counsel by mail on the _____day of September, 1971.

_____
ROBERT G. HEBERT

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 14,120

Filed Sep 22, 1969

LYLE E. STRAHAN

versus

WILLIAM L. STRAHAN and MARTHA H. STRAHAN

	MESSRS.
FOR PLAINTIFF	J. Stanley Wagner 2833 St.Charles Avenue New Orleans, Louisiana 70115
	Robert G. Hebert 608 American Bank Building New Orleans, Louisiana 70130
FOR DEFENDANTS	Berry & Lee Winnsboro Louisiana 71295
	A. Leon Hebert and Donn Moss Robert, Moss & Grafia 118 St. Louis Street Baton Rouge,Louisiana 70801

BEN C. DAWKINS, JR., CHIEF JUDGE

OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The issue in this diversity case is whether the laws of Louisiana violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution by denying the right of inheritance to an illegitimate child of a decedent, as against his legitimate heirs. Defendants moved for summary judgment.

Plaintiff, the alleged illegitimate son of the intestate whose property is the object of this suit, asserts that the rationale of Levy v. Louisiana, 391 U.S. 68 (1968), and Glona v. American Guarantee Company, 391 U.S. 73 (1968), should apply to Louisiana succession laws. Those cases held that "children," as used in Louisiana Civil Code, art. 2315.1/ (without further categorization,) included illegitimate children, reasoning that a child should not be "denied rights merely because of his birth out of wedlock."

We do not think those decisions have such a far-reaching effect.2/ In the first place,

1/ This statute allows certain surviving relatives to recover for wrongful death and suffering of a decedent.

2/ This Court is cognizant of the North Dakota Supreme Court opinion of In Re Estate of Jensen, 162 NW2d 861 (1968), and the possibility that other State Courts may have made similar decisions, holding that Levy requires that a State may not prevent an illegitimate child from sharing in the succession of his parents when there are legitimate children in the family. We also

(continued on next page)

the statutes in Levy and Glona created rights which never existed before their enactment. See dissent in Glona, 391 U.S. 76 (1968). Without that law, no person--parent, collateral, or child (legitimate or illegitimate)--could recover for the wrongful death or suffering of another. Only through legislative grace are such actions maintainable. Conversely, laws regulating the orderly transmission of a decedent's property are founded on the most ancient legal principles.3/ For centuries they have been the basis for establishment of clearly definitive disposition of estates from generation to generation.

It is axiomatic that "... a settlement and distribution of decedents' estates, and the right to succeed to the ownership of realty and personalty are peculiarly matters of State law." Harris v. Zion's Savings Bank & Trust Co., 317 U.S. 447, 450 (1943). As such, the States are free to establish their own regulations and their only guideline is not arbitrarily or unreasonably to discriminate in enacting their applicable laws.

---

notice that New York and California have recently changed their laws of inheritance to put illegitimates and legitimates in the same category insofar as succession laws are concerned. See California Probate Code, § 257 (West, 1956), and McKinney's Consolidated Laws, c 17-b, § 14-1.2 (McKinney, 1967).

3/ 33 Tulane Law Rev. 43 (1958), and authorities cited therein.

> "Differences and distinctions in a State's treatment of persons are frequently claimed to be discriminatory in violation of the equal protection and immunity clauses of the Fourteenth Amendment. But such differences and distinctions, even when applied to persons clearly protected by the Fourteenth Amendment, are not in themselves unconstitutional. It is only when the variations are arbitrary and without reasonable legal basis that an unconstitutional discrimination occurs. A long line of decisions has molded this judicial concept." United States v. Burnison, 339 U.S. 87, 91 (1950).

The distinction between legitimate and illegitimate children in the succession laws of Louisiana is not arbitrary or without reasonable legal basis. Louisiana has a paramount interest in encouraging the institution of marriage and discouraging the birth of illegitimate children. That it chooses to use its inheritance laws as one of its methods in that effort clearly is within its constitutional province. In providing for the welfare of its illegitimate children, Louisiana has distinguished between those illegitimates who may be acknowledged by their parents ("natural children"), and thus enjoy the possibility of sharing in succession property, and those whose rights include only a mere alimony.4/ (unacknowledged illegitimates). Neither do those distinctions constitute invidious discrimination.

4/ La. Civil Code, arts. 918-920.

Since the Legislature of a State may "... limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction," Irving Trust Company v. Day, 314 U.S. 556, 562 (1941), U. S. v. Burnison, supra, Louisiana could permissibly enact a law providing that a testator could leave no more than $10.00 to an illegitimate child. Such a law clearly would be within the State's power. Likewise, Louisiana may and does provide that an illegitimate child cannot inherit as against legitimate heirs from his intestate parents, or inherit under certain conditions only, and this does not do violence to the Fourteenth Amendment.

Conceding for purposes of argument only, and for no other reason, that the illegitimate child should share in Louisiana successions, the State has an even more powerful overriding and paramount reason for denying this right. We refer to the State's indisputable vital interest in the stability of its land titles.

> "As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government. * * *
>
> * * *
>
> "'It [the State] has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is

subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. * * * The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless it conflict with some special inhibitions of the Constitution, or against natural justice."

" * * * Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes. This principle received recognition and was applied in Hamilton v. Brown, 161 U.S. 256, where it was held to be competent for a State to make provision for promptly ascertaining, by appropriate judicial proceedings, who has succeeded to property upon the death of a person leaving such property within the State. * * *.

* * *

> "'* * * The power of the State as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown. * * * '"
> American Land Company v. Reiss, 219 U.S. 47, 60 (1910).

Because of this dominant and legitimate interest, "[t]he power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. * * * The title and modes of disposition of real property within the State, whether inter vivos or testamentary, are not matters placed under the control of Federal authority. * * * United States v. Fox, 94 U.S. 315, 320 (1876); United States v. Burnison, supra; and Richardson v. McDonald, 139 La. 651, 71 So. 934 (1916).

This is as it should be since "[c]oncepts of real property are deeply rooted in State traditions, customs, habits, and laws." Reconstruction Finance Corporation v. Beaver County, 328 U.S. 204, 210 (1946).

There simply must be a method for prompt and final definitive determination of valid

ownership of real property left by a decedent. Louisiana feels that the proper way to insure this is to know who the claimants to a decedent's property are and to recognize the legally instituted claimants as owners shortly after a succession is opened. To hold that an illegitimate child may one day--perhaps many years later--come along and assert an interest in adjudicated property would devastate the orderly transmission of immovable property. "All titles would be insecure, and the intercourse between man and man would be very seriously obstructed, if this principle be overturned." Fletcher v. Peck, 6 Cranch. 87, 133 (1810).

> "It is settled in Louisiana that a prospective purchaser cannot be made to accept a title that is suggestive of future litigation. The test is not whether the outstanding claim is well founded, but whether the claim presents a possibility of future serious litigation." Kinler v. Griffen, 251 F. 2d 655, 658 (5th Cir. 1958).

If plaintiff were to prevail here, this possibility often could present itself, and its devastating effects upon commercial land transactions cannot be overemphasized.

Louisiana's laws on inheritance were not conceived abruptly or discriminatorily, but are the product of the deepest legal thought, tempered by experience and practicality. The redactors saw fit to distinguish among the various survivors of a decedent insofar as their right to inherit property were concerned. That they deemed it proper to favor a descendant over an ascendant, an ascendant

over a collateral, or a legitimate over an illegitimate was within their constitutional authority. Such distinctions are not violative of any Federal Constitutional rights.

Moreover, while confecting the portion of the Louisiana Civil Code on successions, the writers clearly also had in mind the property laws of the State found in that same basic legal work.5/ The interrelationship of the various sections of the Civil Code enables commercial land transactions to proceed on an orderly and legally ascertainable basis. Had the lawmakers permitted illegitimate children to share in a decedent's succession, no title to property would ever be secure and certain. The catastrophic effects of such a law upon all land titles may not be emphasized too strongly.

For the foregoing reasons, defendants' motion for summary judgment is granted.

THUS DONE AND SIGNED, in Chambers, in Shreveport, Louisiana, this 22nd day of September, 1969.

C H I E F J U D G E

5/ See Book 2, Louisiana Civil Code.

APPENDIX "B"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29052

LYLE E. STRAHAN,
Plaintiff-Appellant,

versus

WILLIAM L. STRAHAN and MARTHA H. STRAHAN,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana

(June 17, 1971)

Before TUTTLE, BELL and GOLDBERG,
Circuit Judges.

PER CURIAM: The court has withheld decision in this case pending the disposition by the United States Supreme Court of the case of Lou Bertha Labine etc. v. Simon Vincent, Administrator of the Succession of Ezra Vincent, No. 5257, October Term 1970, U. S. Supreme Court.

This is an appeal from a decision by the

district court holding the Louisiana laws that bar an inheritance by an illegitimate child from its parents to be constitutional. The precise issue was raised in the Supreme Court in the Labine case, with the exception that there the decedent had publicly acknowledged the child, a circumstance which was not present here. Nevertheless, the Supreme Court upheld the constitutionality of the Louisiana laws. See Labine v. Vincent _____U.S. _____, 39 L.Wk. 4344.

The judgment is AFFIRMED.

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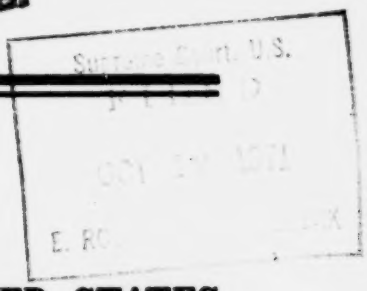

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-365

LYLE E. STRAHAN,

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Versus

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Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

QUESTION PRESENTED

The question presented in this case is whether an illegitimate child who was not acknowledged by his alleged father, who had no familial relationship with him and whose alleged father died partially intestate, is denied Equal Protection of the Laws by the application of Louisiana's laws of inheritance

which provide that the decedent's legitimate mother and legitimate brother inherit that portion of the estate not disposed of by will to the exclusion of the alleged illegitimate child.

SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner (plaintiff) instituted a diversity action in the United States District Court for the Western District of Louisiana *alleging* that he is the son of Opal Dolphin Strahan and the late Dr. Earl O. Strahan who died in Louisiana at his residence and legal domicile, August 13, 1964. Succession proceedings were commenced in accordance with law and respondents were sent and put into possession of the estate left by Dr. Strahan pursuant to the laws of the State of Louisiana. This action was commenced September 30, 1968, by petitioner Lyle E. Strahan against William L. Strahan, decedent's brother, and Martha H. Strahan, decedent's mother. The suit alleges the wrongful conversion of Dr. Strahan's estate.

Depositions of petitioner and his mother reveal that Dr. Strahan was never married to Opal Dolphin and that *if* petitioner is the son of the decedent, he was born out of wedlock. Petitioner was not formally acknowledged by his alleged father and did not live with him. Neither did the decedent live with Opal Dolphin.

The decedent disposed of only one part of his estate by written will (to his mother), therefore Louisiana laws of intestacy (no will) are applicable.

Based upon the state's statutory scheme which makes no provision for the inheritance by an illegitimate son of any property of his father when there exists a legitimate ancestor (decedent's mother) and a legitimate collateral heir (decedent's brother), respondents filed a motion for summary judgment relying on the evidence contained in the deposition.

Petitioner then amended his complaint to challenge the constitutionality of the applicable statutory provisions of Louisiana. The grounds for challenging the statutes were not specified in the amended complaint.

The District Court rendered judgment in favor of respondents, sustaining the motion for summary judgment. *Strahan v. Strahan,* 304 F. Supp 40 (W.D. La., 1969).

Petitioned appealed that decision to the United States Court of Appeals for the Fifth Circuit. Relying on the intervening opinion of this Court in *Labine v. Vincent* —— U.S. —— 91 S.Ct. 1017 (March 29, 1971), the Court of Appeals affirmed the decision of the District Court.

Petitioner now attempts to convince this court that *Labine v. Vincent* was "erroneous, manifestly unjust and contrary to the constitution" and should be overruled and that the present case is a proper one for taking such action.

ARGUMENT

LABINE V. VINCENT SHOULD NOT BE OVERRULED

Respondents respectfully submit that the position taken by the majority of this Court in *Labine* was correct and that the decision should not be overruled. The Court, after the submission of briefs by the parties and amici curae presenting an exhaustive examination of the nature of Louisiana's laws of inheritance in light of constitutional protections, concluded:

> ". . . in the circumstances presented in this case, there is nothing in the vague generalities of the Equal Protection and Due Process clauses which empower this Court to nullify the deliberate choice of the elected representatives of the people of Lou-

isiana", *Labine v. Vincent*, supra, ——U.S.——, 91 S.Ct. 1021.

Due to the short interval of time since this whole matter was considered by the Court, respondents will not burden the Court with the arguments previously presented to it for upholding Louisiana's applicable laws of inheritance. Respondents, however, do reurge the arguments of Appellees and Amici Curae in *Labine*. As the majority of the Court held in *Labine*, we strongly urge that Louisiana's laws of inheritance under attack here do not deprive petitioner of constitutional protections.

Moreover, we respectfully submit that *Labine v. Vincent* should not be overruled in light of the short time interval since its decision and the confusion, chaos and resulting instability — in an area of the law where stability and predictability is critical — which would result from such a reversal.

ASSUMING *AGUENDO THAT LABINE V. VINCENT* SHOULD BE RECONSIDERED, THE PRESENT CASE IS NOT A PROPER VEHICLE FOR SUCH RECONSIDERATION

There are significant features of the present case which renders it an inappropriate vehicle for reconsideration of *Labine*.

Petitioner is not the publicly acknowledged son of the decedent. In *Labine*, Mr. Justice Brennan, speaking for the dissent concluded:

> "In my view, Louisiana's intestate succession laws, insofar as they treat illegitimate children *whose fathers have publicly acknowledged them* differently from legitimate children, plainly violate the Equal Protection Clause of the Fourteenth Amendment." *Labine*, supra, ——U.S.——, 91 S.Ct. at 1022. (emphasis added)

A great part of the rationale of the dissent is predicated upon there being a publicly acknowledged child.

Unlike the situation in *Labine* where (a) the child was publicly acknowledged before a notary and two witnesses, (b) the child's birth certificate identified the father and mother by name, (c) the child's birth certificate was changed a month later to give the child his father's name, (d) the father and mother lived together and (e) the father and mother raised the child until the father's death, the petitioner in the present case was not publicly acknowledged; the mother and alleged father did not live together; and the alleged father did not raise the child. There is no evidence that the alleged father even knew of the child's existence. Certainly there was no "intimate, familial relationships between a child and his own father" *Levy v. Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511 (1968)

The dissent noted in *Labine*,

> "Louisiana might be thought to have an interest in requiring people to go through certain formalities in order to eliminate complicated questions of proof and the opportunity for both error and fraud in determining paternity *after* the death of the father." ——U.S.——, 91 S.Ct. at 1027. (emphasis added)

We strongly urge in the present case, where no formalities were followed, the major objections of the dissent are met and that this case would be inappropriate for reconsideration of *Labine*.

Another significant difference between *Labine* and the present case is that *the decedent in Labine left no will.* In the present case the decedent did partially dispose of his estate by testament. He made a specific bequest to his mother. The remaining estate devolved under the laws of intestacy. Mr. Justice Brennan writing for the dissent in *Labine* rejected

the contention that the father — who died wholly intestate — wished the results obtained by operation of state law. *Labine v. Vincent,* supra, ——U.S.——, 91 S.Ct. at 1025. Here, however, Dr. Strahan made a conscious and formal choice to bequest certain property to his mother. In so doing, it is not unreasonable to conclude that, being a well-educated person, he *intended* that the remainder of his estate devolve according to Louisiana's law of intestacy. Had the decedent wished to change the order of inheritance he at all times before death could have declared that intention in his testament. Under the circumstances here there is a sound basis for concluding that the decedent did not intend to bequeath any part of his estate to an alleged illegitimate child.

CONCLUSION

It is respectfully submitted that the Courts below have correctly determined the issues presented in this case and further that the decision in *Labine v. Vincent* is correct. Even if the Court desires to reconsider *Labine,* this case does not present a proper vehicle for such reconsideration.

For the reasons set forth above, it is respectfully submitted that the petition for certiorari should not be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served upon counsel of record by mailing the same postage prepaid on this _____ day of _____, 1971.

_____

A. Leon Hebert